



MEMORANDUM ENDORSED

HON. SYLVIA O. HINDS-RADIX
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January 16, 2024

BY ECF

Gabriel W. Gorenstein
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *O.M. et al. v. N.Y.C. Dep't of Educ. et al.*, 23-cv-04446 (AT)(GWG)

Dear Judge Gorenstein:

I am the Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, assigned to represent Defendants in the above-referenced action. I write to request that the Your Honor adjourn the settlement conference currently scheduled for January 19, 2024, and extend, in accordance with the requested adjournment, the parties' deadline to submit pre-conference written submissions and acknowledgement forms. Plaintiff does not object to Defendants' request to adjourn the conference in light of the reasons discussed below. Additionally, I write jointly with Plaintiff to request, in the event that Your Honor does not grant Defendants' adjournment request, that Your Honor extend by one additional day the parties' deadline to submit their pre-conference written submission and acknowledgement form.

By Order dated December 13, 2023 ("Order"), Your Honor scheduled a settlement conference in this matter for January 19, 2024 at 2:30 p.m. in Courtroom 519, at the Courthouse located at 40 Centre Street, New York, New York. (Dkt. No. 55.) That Order annexed Your Honor's Standing Order Applicable to Settlement Conferences ("Standing Order"). *Id.* The Order and Standing Order set forth the parties' deadlines to issue a settlement demand and to respond to that demand, respectively, and the deadline for the parties' pre-conference written submissions and acknowledgement form. *See id.*, ¶ 3. By joint letter dated January 11, 2024, the parties jointly requested a one-business-day extension of the latter deadline, and by Order dated January 11, 2024, Your Honor granted that request. (Dkt. Nos. 56, 57.)

As to the conference, the Order and Standing Order both emphasize that required attendees include a party representative responsible for giving settlement authority. *See id.* ¶ 6. The Standing Order additionally notes that in cases where the New York City Office of the Comptroller has authority over settlement, counsel for the City must arrange in advance of the conference for a representative of the Comptroller to either attend the conference or be available by phone; and that a party who attends the conference without all of the required persons may face significant penalties. *Id.* ¶¶ 6, 7. Finally, the Order and Standing emphasize that counsel are *required* to seek an adjournment *sine die* if doing so would permit a party to obtain information that would make the conference more fruitful, or if a client who would otherwise attend by phone would be available to attend in person if the conference were held on another date. *See id.* ¶ 8.

As ordered, Plaintiff sent their settlement demand on January 5, and Defendants sent their settlement response on January 12, shortly after I was able to thoroughly confer with the Department of Education (“DOE”) attorney assigned to this matter. Although I had initially believed that DOE approval would be sufficient authority for Defendants’ settlement offer, through further discussions in recent days, I have come to realize that Comptroller authority will be needed. However, given the short time between Plaintiff’s demand deadline and Defendants’ response deadline, and the even shorter time since I conferred with my agency attorney liaison, I have not had an opportunity yet to request Comptroller authority, let alone obtain it. Accordingly, although Defendants’ settlement response reflected DOE’s settlement position, it noted that further approval would be needed from the Comptroller. Once that approval is obtained, Defendants will be in position to make a true offer. Separately, in light of the above, I have not yet confirmed that a representative from the Comptroller is available to telephonically attend the settlement conference as currently scheduled.

Defendants respectfully submit that adjournment of the settlement conference *sine die* would allow for a more fruitful conference, as it would allow Defendants to obtain settlement authority and, thereafter, to confirm the dates on which a representative from the Comptroller, in addition to this Office and DOE, is available to telephonically attend the conference. Notwithstanding the *sine die* nature of this request, and consistent with the provisions of the Standing Order, Defendants would promptly consult with Chambers and Plaintiff to obtain alternative available dates once these steps have been completed. Defendants additionally submit that an extension of the parties’ deadline to submit pre-conference written submissions would benefit, at the very least, Defendants’ written submission, and, in turn, would enable a more fruitful conference; and that an extension of the parties’ deadline to submit pre-conference acknowledgment forms would allow Defendants to include on that form more complete information regarding the Comptroller’s attendance by phone.

Accordingly, Defendants respectfully request, without objection from Plaintiff, that Your Honor (1) adjourn *sine die* the settlement conference scheduled for January 19, 2024, and (2) extend, to a date contingent upon the as-adjourned settlement conference date, pursuant to the provisions of the Standing Order, the deadline for the parties’ pre-conference written submissions and acknowledgement forms. Defendants additionally respectfully request, jointly with Plaintiff, in the event that the aforementioned requests are denied, that Your Honor extend by one day the deadline for the parties’ pre-conference written submissions and acknowledgement forms.

We thank the Court for its consideration of these requests.


Respectfully,

/s/ _____
Darian Alexander
Assistant Corporation Counsel

CC: BY ECF
all counsel of record

The request to adjourn the settlement conference sine die is granted. Once settlement authority is obtained, the attorneys are directed to discuss settlement by telephone or in person. If those discussions fail, the parties may file a letter requesting a new date for a settlement conference. The letter should propose several dates and times that the parties and their clients are available.

So Ordered.



GABRIEL W. CORENSTEIN
United States Magistrate Judge
January 17, 2024